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Counsel for Defendant Google LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**GOOGLE LLC'S STATEMENT OF NON-
OPPOSITION AND CLARIFICATION
REGARDING PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Judge: Hon. Yvonne Gonzalez Rogers
Date: July 30, 2024
Time: 2:00 p.m.
Location: Courtroom 1 – 4th Floor

1 PLEASE TAKE NOTICE that pursuant to Civil Local Rule 7-3(b), Defendant Google LLC
2 (“Google”) hereby files this Statement of Non-Opposition and Clarification Regarding Plaintiffs’
3 Motion for Final Approval of Class Action Settlement (the “Motion”).

4 **RESPONSE**

5 Google supports approval of the proposed Settlement because it provides fair and
6 meaningful relief to the Rule 23(b)(2) classes that the Court certified after denying Plaintiffs’ request
7 to certify a Rule 23(b)(3) class. The limited relief is targeted at the key concerns raised by the Court
8 during the case—namely, that Google’s private browsing disclosures should more clearly explain
9 that private browsing modes do not block third-party web service providers (including Google
10 specifically) from receiving the industry-standard HTTP requests that facilitate those services. And
11 it reflects a thoughtful and balanced resolution of the case given the significant risks that the parties
12 faced in taking the case to trial.

13 Plaintiffs’ “unopposed” Motion, by contrast, is more gamesmanship—a marketing gambit
14 intended to set the stage for what will be a highly-contested motion for attorneys’ fees.
15 Unsurprisingly, it is rife with misleading and self-serving characterizations of the case history,
16 settlement negotiations, and value of the relief obtained.

17 Google worked to ensure the Motion was accurate, concise and fairly represented the parties’
18 positions. *See* L.R. 11-4(a) and Guidelines for Professional Conduct ¶ 7. Google negotiated for
19 access to Plaintiffs’ approval motion “sufficiently in advance to allow a reasonable opportunity for
20 review and comment.” Dkt. 1097-03 at 5. Plaintiffs had ample time to put together the Motion and
21 provide Google with a draft. Yet, instead of demonstrating good faith and acting consistent with
22 their obligations under the agreement, Plaintiffs provided Google with their draft the afternoon of
23 Thursday, March 28, and demanded that Google provide its comments in 24 hours.

24 Google complied with Plaintiffs’ ultimatum. Yet, Plaintiffs ignored Google’s requests that
25 certain misleading points be presented more accurately, and declined to amend many disputed
26 characterizations of facts and settlement terms that Google identified. *See* Dkt. 1097-15.

27 Several mischaracterizations that Plaintiffs refused to correct are illustrative:
28

- 1 • Plaintiffs repeatedly assert that they obtained “injunctive relief” for the class. Dkt. 1096
2 at 8, 14, 16, 18–22, 24, 25. Not so. The settlement does not contemplate any injunctive
3 order. Rather, in exchange for the consideration given to Google in the agreement,
4 Google contractually agreed to make certain modest disclosure changes, and delete and
5 remediate certain specific unauthenticated data, with none of these steps effectuated by
6 way of a Court-ordered injunction. Google requested that Plaintiffs change “injunctive
7 relief” to “agreed remediation” but Plaintiffs declined.
- 8 • Plaintiffs repeatedly assert that Google was sanctioned for “concealing” information,
9 continuing a pattern of “mischaracteriz[ing] the orders” for which this Court has
10 chastised Plaintiffs. Dkt. 969 at 14 n.16. In fact, neither this Court nor the Magistrate
11 Judge ever found that Google deliberately “concealed” any data. *See* Dkt. 588-1; Dkt.
12 898. The Magistrate Judge declined Plaintiffs’ request to issue a jury instruction that
13 Google “withheld evidence,” Dkt. 655-9 at 8, and instead found that Google should have
14 disclosed certain information earlier. Dkt. 898 at 12.
- 15 • Plaintiffs assert that they “insisted on retaining class members’ rights to sue Google
16 individually for damages.” That is flatly misleading. Plaintiffs had *no authority* to
17 release individual class members’ damages claims after the Court rejected Plaintiffs’
18 request to certify a damages class. Google suggested that Plaintiffs present this point in
19 more accurate terms—“class members retained their rights to sue Google individually
20 for damages”—but Plaintiffs chose to file their misleading version instead.

21 Finally, Plaintiffs’ Motion also baselessly claims that they obtained over “\$5 billion” in
22 benefits for the class. Dkt. 1096 at 3, 14. This false and self-aggrandizing assertion rests on
23 fundamental mischaracterizations of the settlement terms and the agreed relief. It is simply
24 unsupported puffery for Plaintiffs’ forthcoming fee application. Google will fully address Plaintiffs’
25 mischaracterizations in its opposition to that motion.

26 The Settlement provides fair and meaningful relief to the Rule (b)(2) classes and should be
27 approved. But it is not remotely the unqualified triumph that Plaintiffs claim. Rather, the Settlement
28 reflects a fair and balanced compromise, negotiated with assistance of one of the Nation’s leading

1 mediators, by counsel who were cognizant that both sides faced substantial risks at trial—including
2 that Plaintiffs might not obtain any relief at all.

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4 DATED: April 8, 2024

Respectfully submitted,

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